

382.1036

**REMARKS**

Claims 1 and 2 are pending in this application.

In the final Office Action dated March 22, 2006, the Examiner withdrew his objection to the specification and his rejections of claims 1 and 2 under 35 U.S.C. §§ 101 and 102(a) as being anticipated by the Japanese Journal of Tropical Agriculture or the JIRCAS Newsletter. However, the Examiner has maintained his rejection of claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by sequence alignment of SEQ ID NO: 1 with Genseq database accession no: AB088221 of Maoka et al. in (Archives of Virology, 1996; 141(1): 197-204). According to the Examiner, Maoka et al. identifies the organism as an RNA virus and discloses a gene sequence that has perfect alignment with SEQ ID NO: 1.

Applicants first thank Examiner Hill for the courtesies extended during telephone conferences on May 11, 2006, during which the rejection based upon Maoka et al. was discussed. In this telephone conversation, the Examiner stated the basis for his rejection, namely that the sequence alignment with Genseq database accession no. AB088221 showed a 100% match with the claimed SEQ ID NO: 1 sequence and that Genseq database accession no: AB088221 lists the 1996 Maoka et al. article (Archives of Virology, 1996; 141(1):197-204) as reference no. 1, suggesting that the entire sequence of SEQ ID NO: 1 was available at the time of publication of the 1996 Maoka et al. article.

Applicants pointed out to the Examiner that the 1996 Maoka et al. reference did not disclose the entire sequence of the genomic viral RNA isolated. Instead, as discussed on page 199 (last full paragraph) and in Fig. 1 (sequence listing and the caption) of the 1996 Maoka et al. reference, only the 3' terminal consisting of 1404 nucleotides and the capsid protein region of the PLDMV RNA were disclosed therein. The full 10155 bases long SEQ ID NO: 1 was not disclosed until later. The Genseq database accession no: AB088221 first became available to the public only on July 24, 2003 (see the attached printout from <http://www.ncbi.nlm.nih.gov>, the National Institute of Health NCBI web site, regarding the revision history for AB088221), which is later than the February 16, 2001 priority of date of this application.

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By way of explanation, Applicants advise that, when the full-length genomic RNA of the virus was submitted on July 15, 2002, no article relating to the full-length genomic RNA had yet been published. In fact, the article relating to the full-length genomic RNA (Phytopathology, 95:128-34 (2005)) was published only three years later. However, if no reference was mentioned as a source for Genseq database accession no: AB088221, then users of the database would not be able obtain any information about the virus having the sequence. Accordingly, the 1996 Maoka et al. article relating to the 3' terminal of the sequence was listed as a reference for user convenience. Similarly, after the 2005 Phytopathology article was published, it too was added as a source for Genseq database accession no: AB088221. However, it is clear that the full 10155 bases long SEQ ID NO: 1 was not published in the Genseq database accession no: AB088221 until July 24, 2003, after this application's February 16, 2001 priority date.

Therefore, Applicants respectfully request that the Examiner withdraw his rejection of claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by Genseq database accession no: AB088221 of the 1996 Maoka et al. article.

### Conclusion

Reconsideration of the present application, as amended, is requested. If, upon review, the Examiner is unable to issue an immediate Notice of Allowance, the Examiner is respectfully requested to telephone Applicant's undersigned attorney in order to resolve any outstanding issues and advance the prosecution of the case. An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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## Sequence Revision History

PubMed

Nucleotide

Protein

Genome

Structure

PMC

Taxonomy

OMIM

Books

Find (Accessions, GI numbers or Fasta style SeqIds)

About Entrez



difference between I and II as

Entrez

### Revision history for AB088221

Search for Genes

LocusLink provides curated information for human, fruit fly, mouse, rat, and zebrafish

Help|FAQ

Batch Entrez: Upload a file of GI or accession numbers to retrieve protein or nucleotide sequences

Check sequence revision history

How to create WWW links to Entrez

LinkOut

My NCBI (Cubby)

Related resources

BLAST

Reference sequence project

LocusLink

Clusters of orthologous groups

Protein reviews on the web

GI	Version	Update Date	Status	I	II
33235542	1	<u>Apr 20 2005 11:20 PM</u>	Live	⊙	⊙
33235542	1	<u>Feb 2 2005 6:14 PM</u>	Dead	⊙	⊙
33235542	1	<u>Jul 24 2003 11:09 PM</u>	Dead	⊙	⊙

Accession AB088221 was first seen at NCBI on Jul 24 2003 11:09 PM

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